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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/772,200	Applicant(s) JONES-MORTON ET AL.	
	Examiner Justin M. Pats	Art Unit 3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10, 12, 13 and 15-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10, 12, 13 and 15-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/7/09 has been entered, in which Applicant amended claims 1 and 10. Claims 1–8, 10, 12–13, and 15–19 are pending and have been rejected below.

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Response to Amendment

2. The rejection of claims 1–8 under 35 U.S.C. 112, 2nd paragraph is hereby removed in light of Applicant's amendments of 5/7/09.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1–2, 4–8, 10, 12, and 15–19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harvey, *The Selection of Managers for Foreign Assignments: A Planning Perspective*, The Columbia Journal of World Business, Winter 1996, pg. 102–12 in view of Mayer et al., U.S. Pat. Pub. No. 2001/0034630 [hereinafter Mayer] further in view of Applicant's Admitted Prior Art further in view of Broad et al., U.S. Pub. 2004/0064329 [hereinafter Broad].

5. As per claim 1, Harvey teaches a method for selecting associates for expatriate assignments comprising:

identifying a plurality of associates who may be eligible for expatriate assignments (pg. 105, Exhibit 1, Dynamic Selection Process for International Personnel, Stage 2, Cluster Candidates);

identifying a first set of candidates from said plurality of associates (*id.*, Pool of Potential Candidates)

administering a plurality of assessments to said first set of candidates (*id.*, Stage Three: Tactical Level, Selection of Candidates, Testing/Assessment);

entering assessment data for a first set of candidates completing said plurality of

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assessments and preparing candidate selection data for comparing assessment data across all candidates in said first set of candidates, including individual candidate selection worksheets/summaries (pg. 111–112, especially pg. 111, “The focus of [Stage Three] is the assessment of individual candidates to identify those who have optimum personal skills and attributes to fulfill the requirements of the position. This phase will employ selection tools developed to identify qualified candidates. Some of the tools most frequently used are detailed biographical data, standardized tests, work samples, and assessment centers.”; Exhibit 4–5. In order to assess candidates, data regarding said candidate responses or profile data must be entered in some form and prepared such that a comparison and assessment can ensue. For example, if the candidate is given an interview or standardized test, his or her answers are entered either manually on paper (likely the case in Harvey), audibly via tape recorder, or electronically via a computer and prepared for subsequent assessment and comparison purposes.);

creating a group of candidates for said expatriate assignments by selecting a subset of candidates from said first set of candidates (pg. 113, “Once the pool of 'acceptable' candidates has been reduced, one additional dimension of the selection needs to be undertaken. Each candidate must be tested and assessed relative to additional skills that would increase the probability of success in his/her new international position. Two candidates may have equally attractive backgrounds/attributes for the assignment; but, to effectively manage in the future, what developmental activities will each candidate have to undertake before rising to another level of responsibility in the organization. The candidate who will need the least additional training might be preferred over the otherwise "equal" candidate.”);

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establishing a development plan for each candidate in said group of expatriate candidates (pg. 109, "More well-developed international human resource programs will have a defined succession plan for most managerial positions in the company's international operations."; *see also* pg. 105, Exhibit 1, Dynamic Selection Process for International Personnel, Stage Three: Tactical Level, Selection of Candidates, Stage of Family Life-Cycle/ Career Cycle; pg. 112, discussing the importance of the family life-cycle in evaluating potential candidates for foreign assignment in terms of at least cost and adaptation; *see also* pg. 113, "Candidates must be evaluated on their enthusiasm or the intrinsic excitement of a new position overseas; but at the same time, the longrun relocation package and career benefits offered to the candidate must also be assessed.");

identifying a specific assignment related to said expatriate assignments (pg. 105, Exhibit 1, Dynamic Selection Process for International Personnel, Stage 1, Position Requirements/Criteria); and

selecting at least one candidate from said group of expatriate candidates for said specific assignment identified from said expatriate assignments (pg. 105, Exhibit 1, Dynamic Selection Process for International Personnel, Stage Three: Tactical Level, Selection of Candidates, Selection).

Harvey does not explicitly teach providing each of said plurality of associates with preview information relevant to a plurality of expatriate assignments, said preview information comprising organization, job description, and career progression information related to said expatriate assignments, which they have reviewed prior to their identification as candidates. Nor does Harvey explicitly teach wherein a plurality of associates have agreed to be considered for

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said expatriate assignments prior to the receipt of information for a first set of candidates.

Mayer, in the analogous art of matching candidates to available job positions, teaches providing candidates with preview information relevant to a plurality of assignments, said preview information comprising organization and job description information related to said assignments (Mayer, ¶¶ 0065–71, 77–78), and wherein the candidates have agreed to be considered for said assignments prior to the receipt of information for a first set of candidates (Mayer, ¶ 0078, “The candidate can then indicates that he or she is interested in a particular job listing that has been provided with the search results . . . Upon selecting the listing, the employer is notified that a candidate has indicated interest in the available job and the employer receives at least a portion of the candidate profile. Preferably, identifying data corresponding to the candidate is initially withheld (step 84).”).

Harvey does not explicitly teach entering *in a computer* assessment data for said first set of candidates completing said plurality of assessments and preparing *at said computer* a summary report pertaining to candidate selection across all candidates. Meyer teaches these concepts: Potential candidates are prompted to electronically enter information so as to create an online profile which provides the employer with assessment data in order to find the best suited candidate by matching candidate profile information to the requirements of a particular position. Finally, a list can be generated of all candidate matches (Mayer, ¶ 0010, “[T]he present invention provides an interactive employment system which allows a candidate to enter profile data, including identification data, and to match their criteria and then view available job postings.”; ¶¶ 0048–52, 60, 62, discussing candidate profile preferences which a matching job profile should contain.”; ¶¶ 0081–83, “The process commences at step 90 where an employer enters job profile

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data for an available job opening. The data may be stored in job profile database 37. The employer may then conduct a search for possible candidates for a job position by entering search criteria at the web site hosted by server 12 (step 91). The search criteria may incorporate some or all of the data entered above at step 90. The server then compares the entered search criteria to the candidate profiles stored in candidate profile database 36. The server next lists candidates who match the entered search criteria (step 92). All candidates with matching search terms may be listed. The list of matching candidates may be sorted according to the percentage of search terms that match each candidate.”).

Harvey further does not explicitly teach wherein the development plan comprises activities to assist in preparing said candidate for an expatriate assignment. Mayer teaches wherein the development plan comprises activities to assist in preparing said candidate for an assignment via its online training options for candidates (§ 0013, 41, & 56).

It would have been obvious to one of ordinary skill in the art to modify Harvey to include the teaching of Mayer because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Neither Harvey nor Mayer explicitly teaches previewing career progression information. However, Official Notice was taken, and not since adequately traversed by Applicant, that job postings or listings comprising career progression information were old and well known in the art at the time of the invention. This limitation is therefore considered Applicant’s Admitted Prior Art (*see* discussion *infra*, ¶ 24).

It would have been obvious to one of ordinary skill in the art to modify Harvey in view of Meyer to include the teaching of Applicant's Admitted Prior Art because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Furthermore, even though Mayer is not explicitly directed to expatriate assignments, expatriate assignments, their details, and the search for candidates to fill these positions was old and well known at the time of the invention as evidenced above by Harvey. Furthermore, even though Mayer does not explicitly teach wherein the candidates are associates, Harvey teaches this is its selection of internal associates for expatriate assignments. Because each individual element and its function are shown in the prior art, albeit in different references or embodiments, the difference between the claimed subject matter and the prior art rests not on any individual element or function but in the very combination itself—that is in the substitutions of (1) expatriate assignments for the traditional job assignments of Harvey, and (2) associates for the candidates of Harvey. Thus, these instances of simple substitution of one known element for another producing a predictable result render the claim obvious.

Harvey, in view of Mayer, does not explicitly teach retaining information for unselected candidates in said group of expatriate candidates for consideration in future assignments identified from said expatriate assignments, or assignment identification for fulfillment by one of the established candidate group. However, Broad, in the analogous art of employment applicant pooling and selection methods, teaches these concepts as applied to internal and external candidates for corporate positions (§ 0041, discussing placement back into

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candidate pool if job not accepted by candidate; ¶ 0297, discussing candidate's ability to stay in source pool and be considered for future employment opportunities; Abstract, "Applications are entered on-line and placed in an applicant source pool. The applicant source pool is accessible from the computer network. The applicant source pool is screened for candidates when a need arises within the company.", Fig. 2, refs. 206, 208, showing the pool's establishment prior to a need (such as for an assignment) arising within the company"; ¶ 0040, discussing continual development of pool).

With respect to the fact that Broad is not explicitly directed to expatriate assignments, as discussed above, because each individual element and its function are shown in the prior art, albeit in different references or embodiments, the difference between the claimed subject matter and the prior art rests not on any individual element or function but in the very combination itself—that is in the substitution of expatriate assignments for the traditional job positions of Broad. Thus, this simple substitution of one known element for another producing a predictable result renders the claim obvious.

Moreover, it would have been obvious to one of ordinary skill in the art to modify Harvey in view of Mayer further in view of Applicant's Admitted Prior Art to include the teaching of Broad because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

6. As per claim 2, Harvey teaches creating an assignment plan for said at least one candidate

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(pg. 105, Exhibit 1, Dynamic Selection Process for International Personnel, Stage One: Policy level, Corporate Goals, Position Requirements/Criteria).

7. As per claim 4 neither Harvey nor Mayer explicitly teaches wherein providing each of said plurality of candidates with preview information regarding said expatriate assignments comprises providing each of said candidates with a realistic job preview video. However, Official Notice was taken, and not since adequately traversed by Applicant, that providing job preview videos was old and well known in the art of job recruiting at the time of the invention. Thus, this feature is considered Applicant's Admitted Prior Art. Additionally, Broad teaches this limitation (§§ 0042–43, 58). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Harvey in view of Mayer to include the teaching of Applicant's Admitted Prior Art/Broad for the benefit of providing the candidate with a more realistic and accurate depiction of the prospective position and therefore increasing the chances of procuring truly interested and committed candidates who will not drop out before completion of the assignment.

8. As per claim 5, neither Harvey nor Mayer nor Broad explicitly teach wherein receiving identifying information for a first set of candidates from said plurality of candidates comprises determining which candidates have decided to not proceed. However, Official Notice is taken, and has not since been adequately traversed by Applicant, that dropout candidates and their determination was old and well known in the art at the time of the invention. Thus, this feature is considered Applicant's Admitted Prior Art. It would have been obvious to one having ordinary

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skill in the art at the time of the invention to modify Harvey in view of Mayer to include the teaching of Applicant's Admitted Prior Art for the benefit of saving an organization money by preventing the overseas assignment of an unwilling or unmotivated person.

9. As per claim 6, Harvey teaches wherein said assessments comprise motivational (pg. 105, Exhibit 1, Dynamic Selection Process for International Personnel, Stage Three: Tactical Level, Selection of Candidates, Motivational Career Path), behavioral (*id.*, Interpersonal Skills, Stage of Family Life-Cycle/Career Cycle), cultural (*id.*, Cultural Adaptability/Flexibility), and technical (*id.*, Part Performance/Technical Competence, Leadership/Decision Making Style) assessments.

10. As per claim 7, Harvey does not explicitly teach wherein establishing a development plan for each candidate in said group of expatriate candidates comprises establishing development plans according to gaps identified from said motivational, behavioral, cultural, and technical assessments. However, in stage 3 of its selection process (Exhibit 1, pg. 111–113), the method of Harvey determines these capability gaps identified from said motivational, behavioral, cultural, and technical assessments by weeding out unqualified or unable candidates that fall short of certain capabilities or characteristics. Furthermore, development plans for expatriate assignment candidates are old and well known as taught by Harvey as discussed above in the rejection of claim 1. Therefore, applying the known results of a gap analysis to a development plan would have been obvious to one of ordinary skill in the art to achieve a predictable result and result in an improved system that provides candidates with a better chance at improvement and success in the future by identifying the aspects of their capabilities that need the most improvement.

11. As per claim 8, Harvey teaches wherein at least one of said assessments is a self-assessment (pg. 112, discussing the administration of personality and psychological standardized tests to candidates to determine whether they are right for the position).

12. As per claim 10, the only difference between claim 1 and claim 10 is the reiteration of its method steps to produce additional sets of expatriate candidates and identifying and selecting candidates for *a plurality of* expatriate assignments. However, mere duplication of the parts of a method has no patentable significance unless new and unexpected result is produced. In re Harza, 124 USPQ 378 (CCPA 1960). Claim 1 is rejected above by Harvey in view of Mayer further in view of Applicant's Admitted Prior Art further in view of Broad. Therefore, it would have been obvious to modify these references to include these reiteration features to produce a predictable result and result in an improved system that provides for a more rigorous selection process and thus improves the chances of picking the right person for the assignment.

13. Claims 12, 15, 16, 17, and 18 recite limitations that stand rejected via the art citations and rationale applied to claims 2, 6, 8, 1, and 4 respectively as discussed above.

14. As per claim 19, Harvey in view of Mayer further in view of Applicant's Admitted Prior Art further in view of Broad teaches the method of claim 10 wherein identifying a set of candidates comprises: providing each of a plurality of associates with preview information regarding a plurality of expatriate assignments (*see discussion supra ¶¶ 12, 5*); and determining

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which associates have reviewed said preview information and withdrawn voluntarily from further consideration (*see* discussion *supra* ¶ 8).

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15. Claims 3 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harvey in view of Mayer further in view of Applicant's Admitted Prior Art further in view of Broad, as applied to claims 1–2 above, further in view of Poe, *Selection savvy: HR should invest in the selection process for expatriate assignments to prevent costly failures down the road - Global HR - human resources*, HR Magazine, April 2002, pg. 1–4.

16. As per claim 3, neither Harvey nor Mayer nor Applicant's Admitted Prior Art nor Broad explicitly teaches completing arrangements to assign and relocate said at least one candidate for said assignment. Poe teaches this in the analogous art of expatriate selection processes (pg. 2, "In an effort to improve its success rate, Kellogg devised a pilot program intended to identify the best candidates for international assignments. The company asked managers to select possible candidates; then, HR and senior management reviewed the list and narrowed it down to 16 people. Those 16 people and their spouses were given assessment tests that looked at their work styles, values and interests. A comprehensive report on the findings was presented to the employees and their spouses, highlighting potential risks and areas of concern. To date, *four of the 16 candidates have been placed on assignment abroad*, and, Halvers on reports, "No negative issues have come up at all with these people." (emphasis added)).

It would have been obvious to one of ordinary skill in the art to modify Harvey in view of Mayer further in view of Applicant's Admitted Prior Art further in view of Broad to include the teaching of Poe because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the

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combination were predictable.

17. Claim 13 recites limitations that stand rejected via the art citations and rationale applied to claim 3 as discussed above.

Response to Arguments

18. Applicant's arguments filed 5/7/09 have been fully considered but they are not persuasive.

19. Applicant argues that Harvey does not teach or suggest identifying a specific assignment after the pool of candidates has been selected. Applicants, Remarks, 5/7/09, pg. 9. In response, Examiner has brought in Broad to teach this limitation, as such, in combination with Harvey and the other cited art, this limitation is considered obvious.

20. Applicant argues that Harvey, and Mayer for that matter, teach away from the claimed invention and the proposed modification changes the principle mode of operation of Harvey because it develops its pool after an assignment is identified and analyzed. Applicants, Remarks, 5/7/09, pg. 9–10, 12–13. In response, Examiner respectfully disagrees. There is no positive recitation in Harvey that states that a previously established pool of candidates cannot be used for a future job position opening, or that a position and its requirements must be established prior to and utilized in developing a pool of candidates. Also, Examiner notes that in general, pools of candidates must be selected according to some criteria or distinguishing information. Harvey uses organizational criteria in its development of candidate pools in addition to position requirement data. The type of criteria used in the candidate selection pool process does not negate the primary goal of both Harvey and the claimed invention—if Harvey were to be modified such that the pool creation did not factor in position criteria, it would still be, as would Applicant's claimed invention, a candidate pool selection method based on various criteria which

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an organization deems important to assembling the most qualified people for prospective employment. The addition of position requirement data is merely another factor to consider in the overall model. Therefore, it is the Examiner's position that Harvey does not teach away from the claimed invention, and the proposed modification neither changes the principle mode of operation of Harvey nor destroys the functionality of Harvey. This argument also applies to Mayer, where there is no mention that candidates must be selected prior to an assignment or position opening, or that a previously established pool of candidates cannot be used for a future job position opening. Moreover, Mayer even arguably teaches the ordering claimed by Applicant, as employers can use previously established candidate profiles to match a new job posting one or more qualified candidates.

21. Applicant argues that the asserted teachings of Harvey fail because of the different ordering of Harvey, wherein the position requirement are established prior to developing a pool of candidates. Applicants, Remarks, 5/7/09, pg. 9–10. In response, Examiner respectfully disagrees. With regard to the standard for obviousness under 35 U.S.C. 103, it is not necessary that the inventions of the references be physically combinable to render obvious the invention under review. *In re Sneed*, 710 F.2d 1544, 1550 (Fed. Cir. 1983). In particular, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. *In re Keller*, 642 F.2d 413, 425. (CCPA 1981). Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. *id.* A person of ordinary skill in the art is also a person of ordinary

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creativity, not an automaton. *KSR Int'l Co. v. Teleflex inc.* , 127 S.Ct. 1727, 1742 (2007). In an obviousness analysis it is not necessary to find precise teachings in the prior art directed to the specific subject matter claimed because inferences and creative steps that a person of ordinary skill in the art would employ can be taken into account. *Id.* at 1741. As applied here, setting ordering aside for a moment, Harvey teaches each of the disputed limitations individually. The disputed issue here is one of ordering. The ordering as claimed by Applicant is taught by at least Broad as described above. Furthermore, it is Examiner's position that if modified, Harvey would not teach away from the claimed invention, and that the combination of Harvey and the other cited prior art does not change the principle mode of operation of Harvey or destroy its functionality. As such, taking into account the above standard with regard to 35 U.S.C. 103, the cited prior art combination at least suggests the claimed invention, thus rendering it obvious.

22. Applicant argues that Mayer does not teach or suggest preview information because the information in Mayer regards a particular job listing, and because the information is not used to create a pool of candidates, and that therefore the rejection under 35 U.S.C. 103 is improper. In response, Examiner respectfully disagrees. Mayer teaches the preview information with respect to a particular job listing. Applying this functionality over a plurality of listings to produce a plurality or pool of candidates would have been obvious to achieve a predictable result. First, job preview information is at least impliedly used in the determination of employees that qualify for the job in that a significant portion of the applicants at employer's disposal for selection purposes submitted their names as a result of viewing the job preview information and being attracted to the job. Subsequently, candidates submit an application for that job to be reviewed by the

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employer. The employer then matches one or more candidates to the job, thus creating a pool of candidates using the job preview information. It is further noted that providing job preview information prior to making a determination about a candidate is also taught by Broad as discussed above. Application of this known functionality to expatriate assignments would have been obvious to achieve a predictable result as described in the rejection of claim 1.

23. Applicant's arguments with respect to China HR have been considered but are moot in view of the new ground(s) of rejection.

24. Regarding claim 1, Applicant has failed to rebut Examiner's Official Notice that job postings or listings comprising career progression information were old and well known information in the art at the time of the invention. Examiner notes the following discussion of Official Notice taken from the MPEP:

To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.111(b). See also *Chevenard*, 139 F.2d at 713, 60 USPQ at 241 ("[I]n the absence of any demand by appellant for the examiner to produce authority for his statement, we will not consider this contention."). A general allegation that the claims define a patentable invention without any reference to the examiner's assertion of official notice would be inadequate. If applicant adequately traverses the examiner's assertion of official notice, the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained. See 37 CFR 1.104(c)(2). See also *Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697 ("[T]he Board [or examiner] must point to some concrete evidence in the record in support of these findings" to satisfy the substantial evidence test). If the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding. See 37 CFR 1.104(d)(2). If applicant does not traverse the examiner's assertion of official notice or applicant's traverse is not adequate, the

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examiner should clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate. If the traverse was inadequate, the examiner should include an explanation as to why it was inadequate. (MPEP § 2144.03(C))

Applicant has not “specifically point[ed] out the supposed errors in the examiner’s action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art.” For this reason, job postings or listings comprising career progression information are taken to be admitted prior art.

Conclusion

25. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

A. Puram et al., U.S. Pat. 6,289,340 (disclosing a consultant matching system and method for selecting candidates from a candidate pool).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JUSTIN M. PATS whose telephone number is (571)270-1363. The examiner can normally be reached on Monday through Friday, 8:00am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Beth Boswell can be reached on 571-272-6737. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Justin M Pats/
Examiner, Art Unit 3623

/Andre Boyce/
Primary Examiner, Art Unit 3623